



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MCF 21043]

Academy Express, L.L.C.—Acquisition of the Properties of Entertainment Tours, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: Academy Express, L.L.C., a motor carrier of passengers (Academy), has filed an application under 49 U.S.C. 14303 for its acquisition of the properties of Entertainment Tours, Inc., also a motor carrier of passengers (Entertainment).¹ The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by July 27, 2012. Academy may file a reply by August 13, 2012. If no comments are filed by July 27, 2012, this notice shall be effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No.

MCF 21043 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC

¹ Academy filed its application for acquisition of the properties of Entertainment on April 5, 2012. However, the Board determined that the information provided was not sufficiently complete to provide the required notice to the Board and to the public as to the nature of the proposed transaction. In a Board decision served on May 4, 2012, Academy was directed to supplement its application, which it did on May 15, 2012. The filing date of an application is deemed to be the date on which the complete information is filed. See 49 CFR 1182.4(a). Thus, we will treat Academy's application as having been filed on May 15, 2012.

20423-0001. In addition, send one copy of comments to Academy's representative: Fritz

R. Kahn, Fritz R. Kahn, P.C., 1919 M Street, N.W., 7th Floor, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245-0359. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Academy is a limited liability company established under the laws of New Jersey. It holds authority from the Federal Motor Carrier Safety Administration (FMCSA) as a motor carrier providing interstate charter passenger services to the public (MC-413682). Academy is indirectly controlled by the Tedesco Family ESB Trust, which directly controls the following noncarriers: Academy Bus, L.L.C.; Franmar Leasing, Inc.; Franmar Logistics, Inc.; Academy Services, Inc.; and Log Re, Inc. The Tedesco Family ESB Trust also indirectly controls Academy Lines, L.L.C., a motor carrier of passengers principally rendering commuter operations, and No. 22 Hillside, L.L.C., a motor carrier of passengers rendering a variety of services. Entertainment, a corporation established under Massachusetts law, also holds a FMCSA license (MC-262973) and owns Coach N.E., L.L.C., a noncarrier.

Academy is largely focused on providing charter bus and contract carrier services. It offers university transportation shuttles and transports sports teams as a contract bus carrier, and transports groups for churches, clubs, small third-party groups, and other organizations as a charter bus operator. Academy operates mostly in interstate commerce and to a lesser extent in intrastate commerce in the District of Columbia, Virginia, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. Entertainment essentially is a charter bus operator, transporting groups for churches, clubs, and other

organizations mostly in intrastate commerce in Massachusetts and, to a lesser extent, in Connecticut and New Hampshire.

Under the proposed transaction, Academy seeks permission to acquire the properties of Entertainment—namely, its equipment, customer list, and goodwill, as well as Entertainment’s authority to render motor carrier operations in Massachusetts, Connecticut, and New Hampshire. According to the application, the closing occurred on March 30, 2012. Academy states that all of the authorized and outstanding stock of Entertainment was transferred to an independent voting trust, pursuant to a Voting Trust Agreement. Academy submits that, should the Board approve the proposed transaction, the trustee would reconvey the stock to the stockholder of Entertainment, which then would transfer the purchased properties to Academy. According to Academy, Entertainment would remain an independent entity, but would be expected to surrender its interstate operating authority.²

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

² Our voting trust rules at 49 CFR 1013 contemplate the use of voting trusts to facilitate tentative stock transfers before a transaction involving an acquisition of control is approved. The transaction here, however, is not an acquisition of control, but an acquisition of assets. The use of a voting trust in this circumstance appears to be novel, and the Board was not asked for an informal opinion on its suitability here prior to the acquisition. Nonetheless, we will allow this case to proceed because we encourage parties to seek appropriate Board authority (even if they should have done so before undertaking a course of action), and the record does not suggest that the applicants here intended to evade our authority or undermine the integrity of our processes.

Academy has submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), and a statement that the 12-month aggregate gross operating revenues of Academy and Entertainment exceeded \$2 million.

With respect to the effect of the transaction on the adequacy of transportation to the public, Academy states that the proposed acquisition would greatly benefit Entertainment's patrons. According to Academy, passengers would be able to travel in newer, cleaner buses, and would have a far greater selection of tours and special operations than was previously afforded to them. Academy further states that the proposed transaction would have no effect on total fixed charges. Further, Academy states that the transaction would have no adverse effect upon Entertainment's employees, as these employees would be offered employment with Academy. Academy notes that, excluding itself, the American Bus Association has identified 29 charter bus companies operating in Massachusetts, 10 charter bus companies operating in Connecticut, and eight charter bus companies operating in New Hampshire. Academy states that, if the proposed transaction were approved, there would be little or no reduction of competitive conditions in the aforementioned states, especially because Academy would hope to succeed to the business previously conducted by Entertainment in those states. Additional information, including a copy of the application, may be obtained from Academy's representative.

On the basis of the application, the Board finds that the proposed acquisition of control is consistent with the public interest and should be tentatively approved and

authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

The party's application and Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed as having been vacated.
3. This notice will be effective July 27, 2012, unless opposing comments are timely filed.
4. A copy of this decision will be served on: (1) U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: June 7, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner
Begeman.

Derrick A. Gardner

Clearance Clerk

[FR Doc. 2012-14565 Filed 06/13/2012 at 8:45 am; Publication Date: 06/14/2012]